IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.04.2007

CORAM

THE HONOURABLE MR. JUSTICE K.N. BASHA

Crl.O.P.No.32084 of 2004
& Crl.M.P.Nos.10162 and 10163 of 2004

1. A. Yousuf Khan
2. Ashraf Khan
3. Sakhirunnisa
4. A.Ajmal Khan .. Petitioner/Accused 1 to 4

Vs.

1. Inspector of Police,(W-3)
   All Women Police Station,
   Kothawalchavadi Police Station,
   Chennai.

2. The Inspector of Police,
   W-32 All Women Police Station,
   Madipakkam, Chennai - 600 091.
   (Impleaded as per the order
   in M.P.No.222 of 2007
   dated 16.03.2007) .. Respondents

* * *

Prayer : Criminal Original Petition filed under section 482 of Cr.P.C. to call for the entire records in Crime No.16 of 2002 on the file of the Inspector of Police, Amended as per ;order of Court dated 16.3.2007 in Crl.M.P.No. 223/07 W-32 All Women Police Station, Madipakkam Police Station, Chennai - 91, and quash the same.

* * *

For Petitioner :: Mr.Habibullah Basha,
Senior Counsel for
M/s.H.Shameem

For Respondents :: Mr.P. Kumaresan
Additional Public Prosecutor

O R D E R

The petitioners, who have been arrayed as A-1 to A-4 in this case, have come forward with this petition seeking for the relief of quashing

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the First Information Report pending against them for the alleged offence under Sections 498-A I.P.C. and Section 4 of Dowry Prohibition Act, in Crime No.16 of 2002 on the file of the Inspector of Police, W-32, All Women Police Station, Madipakkam, Chennai.

2. The first petitioner is the husband, second petitioner is the father-in-law, third petitioner is the mother-in-law and the fourth petitioner is the brother-in-law of the defacto complainant.

3. The marriage between the first petitioner and the defacto complainant took place on 05.05.2002 at Cochin. The alleged occurrence in this case said to have been taken place on 29.08.2002 and the complainant was lodged on 08.09.2002. The allegation against the petitioners, as per the complaint, is that the petitioners said to have ill-treated the defacto complainant and demanded dowry. It is also pertinent to note before proceedings to consider the contentions put forward by the learned senior counsel for the petitioners that a joint memo was filed by the petitioners and the defacto complainant in the anticipatory bail filed by the petitioners before the learned Principal Sessions Judge, Chennai, in Crl.M.P.No.987 of 2002 and Crl.M.P.No.10041 of 2002 stating that all the jewellery were returned to the defacto complainant and the petitioner also undertaken to pay an amount of Rs.1,00,000/- and the petitioners have been granted anticipatory bail. A perusal of the records further discloses that the defacto complainant has given yet another complaint on the basis of the similar allegations on 03.12.2002 and the case was registered in Crime No.19 of 2002 by the Inspector of Police, All Women Police Station, Neelangarai, Chennai, under Section 498-A I.P.C. and Section 4 of Dowry Prohibition Act. The investigation was proceeded in this Crime Number and ultimately the charge sheet was filed and the same was taken on file by the learned Judicial Magistrate, Alandur, in C.C.No.325 of 2004. The petitioners thereafter filed a quashing petition before this Court in Crl.O.P.No.32083 of 2004 and the same was allowed by this Court by the order dated 11.10.2004 quashing the proceedings initiated against the petitioners in C.C.No.325 of 2004 on the file of the learned Judicial Magistrate, Alandur. Therefore, it is seen that the first complaint registered in Crime No.16 of 2002 on the file the Inspector of Police, W-32, All Women Police Station, Madipakkam Police Station, Chennai, has been simply kept pending and during the pendency of such first complaint, the second complaint was registered, investigated and taken on file in C.C.No.325 of 2004 by the learned Judicial Magistrate, Alandur, and such proceedings quashed by this Court, as stated above.

4. Mr.Habibullah Basha, learned senior counsel for the petitioners vehemently contended that the first information report registered on the basis of the complaint given by the defacto complainant is liable to be quashed and made the following submissions :

i.The defacto complainant having filed a joint memo along with the petitioners in the anticipatory bail and stated that she had

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received all the jewellery and the petitioner also agreed to return a sum of Rs.1,00,000/- and thereafter deliberately filed a second complaint by adding certain more allegations only with a view to harass the petitioners and the conduct of the defacto complainant clearly shows that the first complaint is also based on false allegations.

ii. The defacto complainant, having accepted and aggrieved for compromise, is not entitled to go back to her earlier understandings and rightly, this Court quashed the proceedings initiated on the second complaint in Crl.O.P.No.32083 of 2004.

iii. The findings of this Court in Crl.O.P.No.23083 of 2004 clearly shows that the first complaint (challenged in this petition) given by the defacto complainant is totally false and as such the same is liable to be quashed.

iv. The petitioners not only returned the jewellery but also paid a sum of Rs.1,00,000/-, as admitted by the defacto complainant and this Court observed in the order dated 11.10.2004 in Crl.O.P.No.23083 of 2004 that the defacto complainant suppressed the signing of joint memo and also the pendency of the first complainant (challenged in this petition) and as such this Court quashed the subsequent proceedings initiated on the basis of the second complaint mainly on the ground of suppression of material facts.

v. The defacto complainant also filed a maintenance case in M.C.No.26 of 2003 before the Judicial I Class Magistrate No.II, Kochi, and in the order dated 14.02.2006 it is specifically mentioned that the defacto complainant has stated that the first F.I.R. (challenged in this petition) was in Tamil and hence she could not understand it and the learned Magistrate also held such explanation of the defacto complainant is false and the defacto complainant was actually harassing the first petitioner in all manner and further held that the defacto complainant is not trustworthy enough and she is capable of giving calculated or fabricated versions in accordance with needs.

vi. The conduct of the defacto complainant, who has preferred two complaints on the basis of the one and the same allegations, clearly shows that the defacto complainant is not approaching the police or the Court with clean hands and her conduct of preferring two complaints amount to a clear case of abuse of process of law and Court and therefore, the first complaint in this matter is liable to be quashed.

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5. Per contra, learned Additional Public Prosecutor contended that the first information report in this case contains a specific allegation of cruelty and demand of dowry against the petitioners herein and as such the same is not liable to be quashed, at the same time, the learned Additional Public Prosecutor fairly submitted that during the pendency of first complaint in this case in Crime No.16 of 2002 on the file of the Inspector of Police, W-32, All Women Police Station, Madipakkam, Chennai,

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the defacto complainant preferred the second complaint before the Inspector of Police, All Women Police Station, Neelangarai, and the same was registered in Crime No.19 of 2002.

6. I have carefully considered the rival contentions put forward by either side and also perused the F.I.R. copy in this matter and other materials available on record including the order of this Court in Crl.O.P.No.32083 of 2004 dated 11.10.2004 and the order copy of the learned Judicial I Class Magistrate No.II, Kochi, in M.C.No.26 of 2003 dated 14.02.2006.

7. This is an unusual case wherein, the defacto complainant has preferred two complaints against the petitioners for the alleged offences under Section 498-A I.P.C. and Section 4 of Dowry Prohibition Act. The first complaint (challenged in this petition) registered by the second respondent police in Crime No.16 of 2002 for the alleged offence under Sections 498-A I.P.C. and under Section 4 of Dowry Prohibition Act. The second complaint was preferred before the Neelangarai Police and it was registered in Crime No.19 of 2002. It is not disputed that on the basis of the second complaint given by the defacto complainant on 03.12.2002 before the Neelangarai Police Station registered in Crime No.19 of 2002 is resulting in filing of the final report and thereafter taken on file by the learned Magistrate in C.C.No.325 of 2004. It is also evident that the petitioner challenged that proceedings initiated on the basis of the second complaint preferred by the defacto complainant and this Court quashed the proceedings pending in C.C.No.325 of 2004 on the file of the learned Magistrate, Alandur, by the order dated 11.10.2004 in Crl.O.P.No.32083 of 2004. This Court while passing the above said order observed as follows :

> "8. After careful consideration of the rival submissions made by both the parties, the court is of the opinion that C.C.No.325 of 2004 pending on the file of Judicial Magistrate, Alandur, has got to be quashed. Admittedly, the marriage between the first petitioner anda the complainant took place on 5.5.2002 at Chochin under Muslim Law. After their marriage, they came to Chennai. Due to some disturbances in the matrimony life, the first complaint came to be given by the complaint on 8.9.2002 before the Kothawalchavadi Police Station and the same was registered in Crime No.16/02 on 11.9.2002. A perusal of the First Information Report did not reveal any incident or as to the period of cruelty etc. But within a short span of time, during December 2002, she has given second complaint at Neelankarai Police Station and the said police registered a case in Crime No.19/02 on 3.12.2002. A perusal of the first complaint dated 11.09.2002 and the second complaint dated 3.12.2002 would clearly reveal that all new facts have been brought forth in the second complaint in order to attract

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the provisions."

8. It is also pertinent to note that in the very same order, this Court further observed and quashed the proceedings as follows :

> "As the complainant suppressed earlier proceedings and memo filed between the parties, this Court without any hesitation is of the opinion that the proceedings pending in C.C.No.325 of 2004 has got to be quashed. Accordingly, the same is quashed."

9. Mr.Habibullah Basha, learned senior counsel has rightly placed reliance on the above said findings of this Court. The learned senior counsel further rightly pointed out the findings and observations by the learned Judicial I Class Magistrate No.II, Kochi, in M.C.No.26 of 2003 by the judgment dated 14.02.2006 in the maintenance case filed by the defacto complainant and the respective findings are incorporated hereunder :

> ".... Petitioner explains that the first FIR was in Tamil and hence she could not understand it. That version also is false, because she forwarded Ext.D5 letter to the principal of respondents college with a copy of the FIR, and stated in the letter that the FIR will reveal the harassment of respondent. It makes clear that First FIR was well understood to her. Therefore it is proved beyond doubt, that actually the petitioner harassed the respondent in all manner.
>
> 12. All the above said evidence shows that the marriage was broken down due to the fault of the petitioner and she even harassed the respondent much. Therefore, the petitioner is not trustworthy enough and is capable of giving calculated or fabricated versions in accordance with needs."

10. The above said findings of the learned Magistrate makes it crystal clear that the defacto complainant only with a view to harass and humiliate the petitioners filed two complaints on the similar allegations and the defacto complainant also went to the extent of suppressing the first complaint (challenged in this petition) and preferred the second complaint.

11. The Hon'ble Apex Court has categorically held in SUSHIL KUKMAR SHARMA V. UNION OF INDIA reported in 2005 SCC (Cri.) 1473 that,

> "The object of Section 498-A IPC is to strike at the roots of dowry menace. But by misuse of the said provision a new legal terrorism can be unleashed. The provision is intended to be used as a shield and not as a assassin's weapon. If the cry of "wolf" is made too often as a prank, assistance and protection may not be available when the actual "wolf" appears. Many instance have come to light where the

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complaints are not bona fide and have been filed with oblique motive."

12. The instant case is a concrete example for such misuse and abuse of the provision under Section 498-A I.P.C. As rightly pointed out by the learned senior counsel for the petitioners, the defacto complainant deliberately suppressed earlier complaint given by her which is now challenged in this petition and preferred a second complaint. This Court quashed the proceedings initiated on the second complaint, as already stated, mainly on the ground of suppression of material facts. It is also relevant to note that the complaint under challenge in this petition is also kept pending without any investigation at all as the defacto complainant preferred the second complaint and only that complaint was investigated and ultimately charge sheet filed. The sequence of events in this case and the conduct of the defacto complainant makes it crystal clear that the complaints preferred by the defacato complainant including the first complaint are motivated one and the proceedings initiated are only with an ulterior motive for wreaking vengeance against the petitioners herein and as such the complaint is liable to be quashed in this case.

13. The Hon'ble Apex Court in STATE OF HARYANA V. BHAJAN LAL reported in 1992 Supp. (1) SCC 335 formulated certain guidelines for quashing the first information report or complaint and one of the guidelines stipulated by the Hon'ble Apex Court and in that decision as guideline No.7 is incorporated hereunder :

> "(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

14. This Court has no hesitation to hold that the present complaint in this case squarrely comes within the above said guideline stipulated by the Hon'ble Apex Court for quashing the F.I.R. In view of the sequence of events, viz., suppression of present first complaint, preferring second complaint, findings of this Court regarding suppression of material facts by the defacto complainant in the order dated 11.10.2004 in Crl.O.P.No.23083 of 2004 and the findings of the learned Judicial M Class Magistrate No.II, Kochi, this present complaint is liable to be quashed.

15. For the aforesaid reasons, the F.I.R. pending in Crime No.16 of 2002 on the file of the Inspector of Police, W-32, All Women Police Station, Madipakkam, Chennai – 91, is hereby quashed.

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16. This petition is ordered accordingly. Consequently, connected Miscellaneous Petitions are closed.

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Sd/
Asst. Registrar

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Sub Asst.Registrar

To

1. The Inspector of Police,
   All Women Police Station,
   Kothawalchavadi Police Station,
   Chennai.

2. The Inspector of Police,
   W-32 All Women Police Station,
   Madipakkam,
   Chennai - 600 091.

3. The Public Prosecutor,
   Madras High Court,
   Madras.

4. The Judicial Ist Class Magistrate, No II, Kochi.

+ 2 cc to Mr. H. Shameem, Advocate sR 22389

PV (co)

sg 29/5/07

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